2001 - C.P. 2001

(4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION No. 566 / 2002

PETITIONERS :

1. Nooruddin Virani, son of Badruddin, aged about 33 years, resident of Bairang Bazar, Yajdanibara, behind Chhattisgarh College, Raipur(C.G).

2. Sardarilal Gupta, son of late Lalaram Dalal, aged about 76 years, occupation: Social Worker, resident of Pandri, opp: to New Bus Stand, Raipur (Chhattisgarh).

VERSUS

RESPONDENTS :

1. The State of Chhattisgarh: Through its Chief Secretary, D.K.Bhawan, Raipur (C.G).

2. Union of India: Through its Secretary, Home Ministry, Government of India, New Delhi.

~~3. Commissioner, Raipur (C.G)~~

4. Collector, Raipur (C.G)

5. Shyamacharan Shukla, son of late Ravi Shankar Shukla, aged about 75 years, resident of Shankarnagar, Raipur(C.G).

6. Amitesh Shukla, son of Shyamacharan Shukla, aged about 50 years, resident of Shankarnagar, Raipur (C.G.)

7. Gautam Mishra, son of Suresh Kumar Mishra, aged about 40 years, resident of Shankarnagar, Raipur (C.G)

P.R. No. 565/02 Presented by Shri A.S. Chauhan dated 14.3.02 Annexure 3 deleted as per court order dt. 11.9.03 Sd/- 18/9/03 Attested 18/9/03

383 13/3/02

Received Copy Clerk to A.S. Chauhan 14/3/02.

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(5)

RESPONDENTS: 8. Regional Manager, Bharat Petroleum, Raipur (C.G.)

WRIT PETITION IN THE NATURE OF PUBLIC INTEREST LITIGATION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT, DIRECTION AND/ OR ORDER.

HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM : **Hon'ble Shri A.K. Patnaik, C.J.**
& **Hon'ble Shri V.K. Shrivastava, J**

WRIT PETITION NO. 566 OF 2002

Nooruddin Virani & Anr.

Versus

State of Chhattisgarh & Ors.

Present : Mr. Y.C. Sharma, learned counsel for petitioner No.1.

Smt. Anju Ahuja, learned counsel for petitioner No.2.

Mr. Somesh Bajaj, learned Dy. Govt. Advocate for State of Chhattisgarh / Respondents No.1, 3 & 4.

Mr. Bhishma Kinger, Advocate and Mr. Manindra Shrivastava, Sr. Advocate with Mr. Amit Verma, learned counsel for respondents No.5, 6 & 7.

ORDER

(Passed on 21st April, 2005)

The following order of the Court was passed by **A.K. Patnaik, CJ.:**

The two petitioners are residents of Raipur. They have filed this writ petition as a Public Interest Litigation. They have alleged in the writ petition that a demolition drive was carried out in the city of Raipur and in this demolition drive although several encroachments including those of petitioner No.2 were removed, encroachments made by the respondents 5, 6 & 7 in Raipur in different areas were not removed because the respondents 5, 6 & 7 are influential persons and have high connections. In particular, the petitioners have alleged that an area of 2492 Sq. ft. in Khasra No.267/1 at Tatibandh, Pachpedi Naka, Raipur was given on lease for a period of three years to respondent No.7 Shri Gautam Mishra and respondent No.7 has constructed a Hotel-cum-Wine Bar called Hotel Nest on the said area and the period of three years for which the lease was

granted has expired in the meanwhile and yet respondent No.7 continues to occupy the said area which belongs to the State Government. It is further alleged in the writ petition that an area of acre 0.39 in Khasra No.271/7 at Pachpedi Naka on the National Highway Raipur is in occupation of the respondents 5 & 6 and a Petrol Pump has been established on the said area, but the respondents 5 & 6 have made construction beyond the said area of 0.39 acre and have encroached upon the government land. It is also alleged that near the Old Bus Stand, Raipur, some land was given to the family of the respondents 5 & 6 for the purposes of establishing a Petrol Pump and the said land continues to be occupied by the respondents 5 & 6 for purposes other than a petrol pump and in fact the family of the respondents 5 & 6 are carrying on the business of a Food Parlor in the said land.

2. Respondents No.5, 6 & 7 as well as respondents No.1, 3 & 4 have stated in their counter affidavits that so far as the land in Khasra No.267/1 measuring area 2492 Sq. ft. in Tatibandh, Pachpedi Naka, Raipur is concerned, the lease in favour of respondent No.7 has expired and the respondent No.7 has filed an application for renewal of the lease and the said application for renewal is still pending disposal by the concerned authorities. Regarding land measuring acre 0.39 in Pachpedi Naka, Raipur on the National Highway, respondents 5 & 6 as well as respondents 1, 3 & 4 have taken a stand in their counter affidavits that the said land measuring acre 0.39 is the personal property of respondents 5 & 6. Regarding the land near the Old Bus Stand in Raipur where the petrol pump was established, respondents 5 & 6 have stated in the counter affidavit that the petrol pump on the said land has now been shifted to the land of M/s J. Shukla & Co., the family partnership of respondents 5 & 6, at Pachpedi Naka, Raipur on the National Highway and the said land near the Old Bus Stand where the petrol pump was earlier located has been surrendered by the Bharat Petroleum Corporation Ltd. to the government. It is further stated in the counter affidavit of respondents 5 & 6 that adjacent to this land at the Old Bus Stand in Raipur two more pieces of land, one measuring 1500 Sq. ft. and other measuring 3682 Sq. ft. have been given on lease to M/s. J. Shukla & Co., the family partnership firm of respondents 5 & 6 for the purpose of carrying on trade and business and

copies of the lease deeds in respect of said two pieces of land have been annexed to the counter affidavits as Annexures R-5/7, R-5/8 & R-5/9.

3. Shri Y.C. Sharma, learned counsel appearing for petitioner No.1 submitted that the petitioner No.1 has filed an application for withdrawal and therefore, the petitioner No.1 is no longer interested in pursuing this public interest litigation.

4. Smt. Anju Ahuja, learned counsel appearing for petitioner No.2 vehemently submitted that considering the encroachments made by the respondents 5, 6 & 7 in the city of Raipur and in the National Highway at Pachpedi Naka Raipur, it is a fit case in which the High Court should direct an enquiry by the CBI.

5. Shri Bhishma Kinger, Advocate & Mr. Manindra Shrivastava, Sr. Advocate, with Mr. Amit Verma, learned counsel for respondents 5, 6 & 7 on the other hand submitted that the petitioner No.2 is pursuing this public interest litigation on account of the previous grudge entertained by the petitioner No.2 against respondents 5, & 6 and since the bonafides of the petitioner No.2 are in doubt, the High Court should not entertain this writ petition as public interest litigation and should dismiss the same at the threshold.

6. Shri Somesh Bajaj, learned Dy. Govt. Advocate appearing for the State of Chhattisgarh relied on the return filed by respondents 1, 3 & 4.

7. Since allegations of encroachments on Government land in the city of Raipur have been made by the petitioner No.2 in this writ petition, we are not inclined to dismiss this writ petition at the threshold because such encroachments, if any, in the crowded city of Raipur have to be removed in the public interest. But since encroachments, if any, can be removed by the concerned authorities in accordance with law it is not necessary to direct an enquiry by the CBI.

8. So far as land measuring 2492 Sq. ft. in Khasra No.267/1 in Tatibandh, Pachpedi Naka Raipur is concerned, admittedly the said land was leased out in favour of respondent No.7 for a period of three years and admittedly the said period of three years has expired and it appears

that respondent No.7 has filed a renewal application, but the said renewal application has not been disposed of by the authorities as yet. On the said land the respondent No.7 appears to have constructed a Hotel-cum-Bar styled as Hotel Nest. In case the application for renewal is allowed and the lease is renewed in favour of respondent No.7 for a further term, the said construction would not be an encroachment and need not be removed. But in case the application for renewal is rejected by the concerned authorities, obviously, the construction of the Hotel-cum-Wine Bar on the said land by the respondent No.7 beyond the period of lease would amount to encroachment. Hence the proper order in this matter would be to direct the respondent No. 1 to dispose of the application for renewal filed by respondent No.7 in respect of the said land in accordance with law within one month of receipt of the copy of this order from this Court and in case the application for renewal is rejected by the authorities, steps will be taken by the concerned authorities for eviction of respondent No.7 in accordance with law and in such eviction process all due opportunities will be given to respondent No.7 as provided under the law. It goes without saying that in case the respondent No.7 is aggrieved by the orders passed by the authorities either on the application for renewal or in the eviction proceedings, it would be open for respondent No.7 to move the appropriate forum for relief.

9. Regarding land measuring acre 0.39 in Pachpedi Naka Raipur on the National Highway, since the respondents No.1, 3 & 4 and respondents 5 & 6 have taken a stand in their respective counter affidavits before this Court that the said land belongs to M/s J. Shukla & Co., the family Partnership of respondents 5 & 6, this Court in this writ jurisdiction under Article 226 of the Constitution of India cannot go into the question as to whether the said land actually belongs to M/s J. Shukla & Co., the family partnership of respondents 5 & 6 or belongs to the State Government. It is settled law that the matters in which the title to land is disputed, the appropriate forum is the Civil Court and the appropriate remedy is a Civil Suit. Hence we decline to decide the question of title to the said land measuring acre 0.39 said to belong to the family of respondents 5 & 6. But since an allegation has been made in the writ petition that respondents 5 & 6 or the family partnership firm of respondents 5 & 6 who have put up the petrol pump on the said land have encroached on land

beyond the said area of acre 0.39, we are of the view that the Collector Raipur, respondent No.4 will cause an enquiry into the matter and if he finds that there have been encroachments by the respondents 5 & 6 or the family partnership firm of respondents 5 & 6 beyond the area of acre 0.39, he will ensure that appropriate steps are taken in accordance with law for removal of the said encroachments. This action will be initiated by the Collector, Raipur within a period of one month from the date of receipt of a copy of this order from this Court.

10. Regarding the land at the Old Bus Stand in Raipur where the petrol pump of Bharat Petroleum Corporation Ltd. was earlier situated, the stand of respondents 5 & 6 in the counter affidavit is clear that the land on which the petrol pump was located has been surrendered by the Bharat Petroleum Corporation Ltd. to the concerned authorities after shifting of the petrol pump to Pachpedi Naka Raipur on the National Highway. The Collector, respondent No.4 will enquire into the matter within a period of one month from the date of receipt of a copy of this order from this Court and will ensure that possession of the land said to have been surrendered is with the government. We make it clear that M/s J. Shukla & Co., the family partnership of respondents 5 & 6 will not be disturbed in respect of possession of the area of 1500 Sq. ft. and 3682 Sq. ft. near the old Bus stand, Raipur given on lease to M/s. J. Shukla & Co. under Annexures R-5/7, R-5/8 & R-5/9 for trade and business purposes.

11. Smt. Anju Ahuja submitted that the case of the petitioner No.2 in the writ petition is also that the very allotment of the said two pieces of land measuring 1500 Sq. ft. & 3682 Sq. ft. in favour of M/s. J. Shukla & Co. is illegal. We are afraid that in this public interest litigation complaining of encroachments on Government land, we cannot go into this question. If a specific case of illegality in making the allotment of the two pieces of land is made out in a separate writ petition by any party whose interest has been affected by such allotment, the High Court can consider the same on its own merits.

12. With the aforesaid directions and observations, the petition is disposed of. Parties shall bear their own costs. A copy of this order will be sent by the Registry to the Collector, Raipur (Respondent No.4) forthwith for compliance.

Sd/-
V.K. Shrivastava
Judge

Sd/-
Chief Justice